

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

|                                 |   |                               |
|---------------------------------|---|-------------------------------|
| <b>UNITED STATES OF AMERICA</b> | ) |                               |
|                                 | ) |                               |
|                                 | ) |                               |
|                                 | ) |                               |
| <b>v.</b>                       | ) | <b>CRIMINAL No. 04-88-P-H</b> |
|                                 | ) |                               |
| <b>GUS BRAGGS,</b>              | ) |                               |
|                                 | ) |                               |
| <b>DEFENDANT</b>                | ) |                               |

**ORDER ON DEFENDANT'S MOTION TO REDUCE SENTENCE**

The defendant has asked for the appointment of counsel on a form prepared by this District's Federal Defender's office in connection with processing cases under the retroactive cocaine base (crack) Guideline amendment. Because the retroactive Guideline cannot help this defendant, however, I deny the motion.

I first sentenced the defendant on January 6, 2005. I found him to be a career offender under Guideline 4B1.1, with a Guidelines range of 262 to 327 months. Drug quantity did not affect determination of that Guidelines range. I then granted a government motion to depart and sentenced the defendant to 180 months. The defendant appealed and in the interim the Supreme Court decided United States v. Booker, 543 U.S. 220 (2005). The case was remanded for resentencing because Booker had made the Guidelines advisory. I resentenced the defendant on January 30, 2006, and imposed the identical sentence, unaffected by drug quantity.

Because the defendant's final sentence was not affected by drug quantity (not in calculation of the Base Offense Level or Total Offense Level and in the resulting Guidelines range; and not in the amount of the downward departure), the Guideline amendment reducing the offense levels for crack cocaine cannot alter this defendant's sentence.

Accordingly, the defendant's motion, treated as both a motion to appoint counsel and to reduce sentence under 18 U.S.C. § 3582(c), is **DENIED**.

**SO ORDERED.**

**DATED THIS 1<sup>ST</sup> DAY OF FEBRUARY, 2008**

/s/D. BROCK HORNBY

**D. BROCK HORNBY**

**UNITED STATES DISTRICT JUDGE**